

(202)

2023:PHHC:072352

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-45228 of 2018

Date of Decision: May 18, 2023

Narbir Singh

...Petitioner

Versus

Kailash Chand Sharma and another...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Deepender Singh, Advocate for the petitioner.

None for the respondents.

DEEPAK GUPTA, J.(Oral)

During proceedings of criminal complaint bearing CNR No.HRFB03-025214/16 titled “Narbir Singh Vs. Kailash Chand and another”, an application was moved by the accused (now respondent) for examining handwriting expert so as to prove the document Annexure-A. That application was dismissed by learned Judicial Magistrate Ist Class, Faridabad by giving following reasons:-

“Ld. Counsel for both parties argued as per their pleadings. Heard case file perused and to my mind application under consideration is liable to be dismissed for the reasons as follows. First of all document Annexure-A perused and the same not bears name of the scribe, any initial, where the said document written and it simply bears on the left margin date and some calculation work. On merits though the written document asserted by defence but specifically denied to be written by the complainant side. So Annexure A without necessary details of particulars that written by whom and for

what purpose further with regard to the lottery transactions no any corresponding lottery ticket etc. are annexed either with the application under consideration or annexure A, in order to enhance value of document annexure A. Further case file perused and in present case for cross-examination of complainant, more than 7 opportunities were availed by defence side and even cost was also imposed upon defence, so contention of respondent/ complainant counsel appears to be sound and application under consideration is moved only with sole motive of delaying the trial of the present case. At the stage keeping in view discussion above application under consideration is dismissed being devoid of merits.”

However, the afore-said order has been upset by the revisional Court in the impugned order dated 10.09.2018 (Annexure P.8).

Contention of learned counsel for the petitioner- complainant is that revision against the order passed by the Magistrate was not even maintainable. Learned counsel has relied upon **Sethuraman Vs. Rajamanickam, 2010(5) RCR (Criminal) 512**, wherein it was held by Hon'ble Supreme Court that when production of documents is sought under Section 311 Cr.P.C and trial Court refuses to call the documents and reject the application under Section 311 Cr.P.C, the revision against that order is not maintainable. Further reliance is placed upon **Surender Kumar Sharma Vs. Rajesh Dagar, 2012(14) R.C.R. (Criminal) 911**, wherein an application was filed for appointment of handwriting expert for examining the document and comparing the same with writing of the

accused in a complaint under Section 138 of the Negotiable Instruments Act, the application was dismissed by the trial Magistrate. It was held by this High Court that order in question was interlocutory order against which revision was not maintainable and so, the petition was dismissed.

In the present case, despite notice of motion having been served upon the respondents- accused, nobody made appearance to contest this petition. No contrary view has been cited on behalf of the respondent due to non-contesting the petition.

Having regard to the legal position, as relied upon by learned counsel for the petitioner, this petition is accepted. Impugned order dated 10.09.2018 (Annexure P.8) passed by learned Additional Sessions Judge, Faridabad is hereby set aside and that of the trial Court is hereby restored.

May 18, 2023

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No